

BRESSLER, AMERY & ROSS
A Professional Corporation
325 Columbia Turnpike
Florham Park, New Jersey 07932
P.O. Box 1980
Morristown, New Jersey 07962
973) 514-1200
(BA 7144)
(DL 9250)

MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
35th Floor
Los Angeles, California 90071
(213) 683-9100

Attorneys for Defendants
Merrill Lynch & Co., Inc., Merrill
Lynch Group, Inc., and Merrill Lynch,
Pierce, Fenner & Smith Incorporated

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THOMAS J. DEBENEDICTIS	:	
on behalf of himself and all others	:	Civil Action No. 04-404 (JLL)
similarly situated	:	
Plaintiffs,	:	Honorable Jose L. Linares,
	:	U.S.D.J.
v.	:	
MERRILL LYNCH & CO., INC.;	:	NOTICE OF MOTION
MERRILL LYNCH, PIERCE, FENNER :		
& SMITH INCORPORATED;		
MERRILL LYNCH GROUP, INC.;	:	
FAM DISTRIBUTORS, INC.; MERRILL		
LYNCH INVESTMENT MANAGERS, :		
L.P.; FUND ASSET MANAGERS, L.P.,		
and PRINCETON SERVICES, INC.,	:	
Defendants.	:	

**TO: Arthur Penn, Esq.
PELLETTIERI, RABSTEIN
& ALTMAN
790 Woodlane Road
Tarnsfield Plaza
Mt. Holly, NJ 08060**

**James R. Malone, Jr., Esq.
CHIMICLES & TIKELLIS LLP
361 West Lancaster Avenue
Haverford, PA 19041**

**Michael J. DeBenedictis, Esq.
DEBENEDICTIS & DEBENEDICTIS
41 South Haddon Avenue, Suite 5
Haddonfield, NJ 08033**

Attorneys for Plaintiff Thomas J. DeBenedictis

PLEASE TAKE NOTICE, that on December 27, 2004 at 9:30 a.m. or as soon thereafter as counsel can be heard, the defendants Merrill Lynch & Co., Inc., Merrill Lynch Group, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Moving Defendants”) through their attorneys Bressler, Amery & Ross, P.C., and Munger, Tolles & Olson, LLP, will move before the Honorable Jose L. Linares, United States District Judge, at the Martin Luther King, Jr. Federal Building & United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for an order dismissing the Amended Class Action Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b).

In support of this motion, Moving Defendants will rely upon the Moving Defendants’ Brief in Support of Their Motion to Dismiss, proposed form of Order, the Motion and supporting papers filed concurrently herewith by Defendants FAM Distributors, Inc.; Merrill Lynch Investment Managers L.P.; Fund Asset Managers, L.P., and Princeton Services, Inc., and arguments of counsel in open Court.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

BRESSLER, AMERY & ROSS
A Professional Corporation
325 Columbia Turnpike
Florham Park, New Jersey 07932
P.O. Box 1980
Morristown, New Jersey 07962

By: 

Brian F. Amery (BA 7144)
David J. Libowsky (DL 9250)

MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue
35th Floor
Los Angeles, California 90071
(213) 683-9100
(213) 687-3702 (fax)

Attorneys for Defendants Merrill Lynch & Co.,
Inc., Merrill Lynch Group, Inc., and Merrill Lynch,
Pierce, Fenner & Smith Incorporated

Dated: November 19, 2004